

BOARD OF COUNTY COMMISSIONERS
Agenda Item Summary

Meeting Date January 19, 2005

Division **County Attorney**

AGENDA ITEM WORDING

Approval of Lease Agreement for area adjacent to the Bayview Inn and Marina on Conch Key.

ITEM BACKGROUND

When FDOT transferred to County to 100 foot wide strip of land on Conch Key, FDOT assigned a lease to County for an area being used by Bayview Inn as parking lot. Jose Papa of Growth Management has indicated that the property is buildable and could be used for activities consistent with the land use designation and zoning district. Upon receipt of the current request, Mr. Papa indicated that Growth Management would recommend any lease modification to add the requested area would include language to bar any permanent improvements that the lease be relatively short-term until the Livable CommuniKeys Plan for this area could be completed. At that time, the Growth Management Division would be better able to make specific recommendations as to use, further development, and extension of lease.

PREVIOUS RELEVANT BOCC ACTION

On December 15, 2004, The BOCC approved a Request direction (negotiate lease modification, deny request, etc.) as to processing the request to annex the area adjacent to the Bayview Inn and Marina on Conch Key, to the existing leased area into tenant's leasehold.

CONTRACT/AGREEMENT CHANGES

STAFF RECOMMENDATIONS

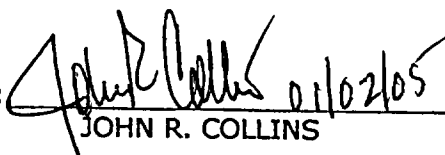
Approval.

TOTAL COST	BUDGETED	Yes	No
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COST TO COUNTY	SOURCE OF FUNDS
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APPROVED BY: County Attorney ■ OMB/Purchasing Risk Management

DIVISION DIRECTOR APPROVAL:

 01/02/05
JOHN R. COLLINS

DOCUMENTATION: Included

AGENDA ITEM # _____

R-2

LEASE AGREEMENT

This Agreement is made and entered into this 19th day of January, 2005, by and between MONROE COUNTY, a political subdivision of the State of Florida, whose address is 1100 Simonton Street, Key West, FL 33040, (COUNTY), and SEASHIME, LLC, a limited liability corporation incorporated in the State of Florida, whose address is 15 Ridge Boulevard, Ocean Ridge, FL 33435 (the LESSEE).

WHEREAS, the COUNTY owns a parcel of land situated on Conch Key and leases said property to Lessee; and

WHEREAS, the COUNTY owns a parcel of land situated adjacent to the above-referenced leased property on Conch Key and more particularly described in Exhibit "A;" and

WHEREAS, LESSEE and LESSEE's predecessors in interest to the property known as Bay View Inn have been maintaining the parcel described in Exhibit A for a number of years; and

WHEREAS, County has no plans to use said property in the near future while LESSEE would like to use the property for overflow parking and other uses related to the business operated as Bay View Inn; now therefore

IN CONSIDERATION OF the mutual promises contained herein, the parties agree as follows:

1. **PROPERTY.** The COUNTY leases exclusively to the LESSEE the land shown on Exhibit A, hereafter the premises. Exhibit A is attached and made a part of this Agreement.

2. **TERM.** The term of this Agreement shall run concurrent with the lease of the adjacent property and shall be one year and five months running from February 1, 2005 through June 30, 2006. In the event that the lease of the adjacent property subject to a lease between the parties is renewed, LESSEE shall have an option to renew this Lease under the same terms and conditions herein.

3. **USE AND CONDITIONS.** The premises shall be used solely for the purposes of parking and maintenance of existing landscaping. No signs of any kind will be permitted on the leased right-of-way area. If the premises are used for any other purpose, the COUNTY shall have the option of immediately terminating this Agreement. LESSEE shall not permit any use of the premises in any manner that would obstruct or interfere with any COUNTY functions and duties.

The LESSEE will further use and occupy said premises in a careful and proper manner, and not commit any waste thereon. LESSEE will not cause, or allow to be caused, any nuisance or objectionable activity of any nature on the premises. Any activities in any way involving hazardous materials or substances of any kind whatsoever, either as those terms may be defined under any state or federal laws or regulations or as those terms are understood in common usage, are specifically prohibited. The LESSEE will not use or occupy said premises for any unlawful purpose and will, at LESSEE's sole cost and expense, conform to and obey any present or future ordinance and/or rules, regulations,

requirements and orders of governmental authorities or agencies respecting the use and occupation of said premises.

4. **RENT.** For the use of the premises, the LESSEE must pay the COUNTY the sum of \$ 600.00 per year, due in monthly installments on the first day of the month payable in advance. The monthly payments shall be remitted to Monroe County Clerk's Office, 500 Whitehead Street, Key West, FL 33040.

5. **TAXES.** The LESSEE must pay all taxes and assessments, including any sales or use tax, levied by any government agency with respect to the LESSEE's operations on the premises.

6. **INSURANCE.** LESSEE shall, throughout the term of this lease, maintain insurance in a minimum amount of One Million Dollars (\$1,000,000.00) for bodily injury or death to any One person or number of persons in any one occurrence and not less than One Million Dollars (\$1,000,000.00) for property damage unless waived or modified by County Risk Management per Administrative Instruction 4709. The insurance policy (or policies) shall name Monroe County as an additional insured. Insurance already required under the pre-existing lease may be extended to cover Lessee's activities on the parcel leased hereunder.

The LESSEE must keep in full force and effect the required insurance during the term of this Agreement. If the insurance policies originally purchased which meet the requirements of this lease are canceled, terminated or reduced in coverage, then the LESSEE must immediately substitute complying policies so that no gap in coverage occurs. Copies of current policy certificates shall be filed with the COUNTY whenever acquired or amended.

7. **CONDITION OF PREMISES.** The LESSEE must keep the premises in good order and condition. The LESSEE must promptly repair damage to the premises. At the end of the term of this Agreement, the LESSEE must surrender the premises to the COUNTY in the same good order and condition as the premises were on the commencement of the term, normal wear and tear excepted. The LESSEE is solely responsible for any improvements to land and appurtenances placed on the premises.

8. **IMPROVEMENTS.** No structure or improvements of any kind shall be placed upon the land without prior approval in writing by the County Administrator, a building permit issued by COUNTY and any other agency, federal or state, permits required by law. Any such structure or improvements shall be constructed in a good and workmanlike manner at LESSEE's sole cost and expense. Subject to any landlord's lien, any structures or improvements constructed by LESSEE shall be removed by the LESSEE at LESSEE's sole cost and expense, by midnight on the day of termination of this Agreement or extension hereof, and the land restored as nearly as practical to its condition at the time this agreement is executed unless the Board of County Commissioners accepts in writing delivery of the premises together with any structures or improvements constructed by LESSEE. Portable or temporary advertising signs are prohibited.

LESSEE shall perform, at the sole expense of LESSEE, all work required in the preparation of the property or premises hereby leased for occupancy by LESSEE; and LESSEE does hereby accept the leased property or premises as now being in fit and tenantable condition for all purposes of LESSEE.

COUNTY reserves the right to inspect the leased area and to require whatever adjustment to structures or improvements as COUNTY, in its sole discretion, deems necessary. Any adjustments shall be done at LESSEE's sole costs and expense. Any building permits sought by LESSEE shall be subject to permit fees.

9. **HOLD HARMLESS.** The LESSEE is liable for and must fully defend, release, discharge, indemnify and hold harmless the COUNTY, the members of the County Commission, County officers and employees, and County agents and contractors, and the State, its officers and employees, from and against any and all claims, demands, causes of action, losses, costs and expenses of whatever type - including investigation and witness costs and expenses and attorneys' fees and costs - that arise out of or are attributable to the LESSEE's operations on the premises except for those claims, demands, damages, liabilities, actions, causes of action, losses, costs and expenses that are the result of the sole negligence of the COUNTY. The LESSEE's purchase of the insurance required under this Agreement does not release or vitiate its obligations under this paragraph.

10. **NON-DISCRIMINATION.** The LESSEE for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of premises or in the contracting for improvements to the premises.

11. **TERMINATION.** The COUNTY may treat the LESSEE in default and terminate this Agreement immediately, without prior notice, upon failure of LESSEE to comply with any provision of this Agreement. This Agreement may be terminated by COUNTY if and when, for any reason its controlling lease is terminated by the State, upon provision of reasonable notice. LESSEE may terminate this Agreement upon giving thirty days prior written notice to COUNTY.

12. **DEFAULT-WAIVER.** The waiver by the LESSEE or the COUNTY of an act or omission that constitutes a default of an obligation under this Agreement does not waive another default of that or any other obligation.

13. **ASSIGNMENT.** The LESSEE may not assign this Agreement or assign or subcontract any of its obligations under this Agreement without the approval of the COUNTY's Board of County Commissioners. All the obligations of this Agreement will extend to and bind the legal representatives, successors and assigns of the LESSEE and the COUNTY.

14. **SUBORDINATION.** This Agreement is subordinate to the laws and regulations of the United States, the State of Florida, and the COUNTY, whether in effect on commencement of this lease or adopted after that date.

15. **INCONSISTENCY.** Any item, condition or obligation of this Agreement that is in conflict with the items listed in this paragraph is superseded to the extent of the conflict.

16. **GOVERNING LAWS/VENUE.** This Agreement is governed by the laws of the State of Florida and the United States. Venue for any dispute arising under this Agreement must be in Monroe County, Florida. In the event of any litigation, the prevailing party is entitled to a reasonable attorney's fee and costs.

17. **CONSTRUCTION.** This Agreement has been carefully reviewed by the LESSEE and the COUNTY. Therefore, this Agreement is not to be construed against any party on the basis of authorship.

18. **NOTICES.** Notices in this Agreement, unless otherwise specified, must be sent by certified mail to the following:

COUNTY
County Administrator
1100 Simonton Street
Key West, FL 33040

LESSEE
Edward Buxton
15 Ridge Boulevard
Ocean Ridge, Fl. 33435

19. **FULL UNDERSTANDING.** This Agreement is the parties' final mutual understanding. It replaces any earlier agreements or understandings, whether written or oral. This Agreement cannot be modified or replaced except by another written and signed agreement.

IN WITNESS WHEREOF, each party has caused this Agreement to be executed by its duly authorized representative.

(SEAL)
ATTEST: DANNY L. KOLHAGE, CLERK

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By _____
Deputy Clerk

By _____
Mayor/Chairman

(SEAL)
ATTEST:

SEASHIME, LLC

By: _____
Title: _____

By: _____
Title: _____

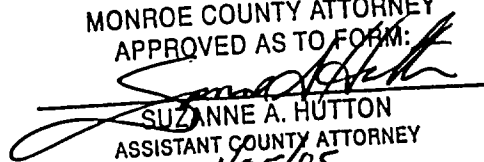
MONROE COUNTY ATTORNEY
APPROVED AS TO FORM:

SUZANNE A. HUTTON
ASSISTANT COUNTY ATTORNEY
Date 1/25/05

EXHIBIT "A"

LEGAL DESCRIPTION

THAT PORTION OF STATE ROAD NO. 5 (U.S. HIGHWAY No. 1) LYING SOUTHEASTERLY OF AND ADJACENT LOT 46 (SUBMERGED) "CONCH KEY", A SUBDIVISION AS RECORDED IN PLAT BOOK 2, PAGE 130, OF SECTIONS 14 AND 15, TOWNSHIP 65 SOUTH, RANGE 34 EAST, OF THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE MOST SOUTHERLY CORNER OF LOT 32, OF SAID "CONCH KEY" SAID CORNER ALSO BEING THE RIGHT OF WAY LINE INTERSECTION OF THE NORTHWESTERLY RIGHT WAY LINE OF SAID STATE ROAD NO. 5 AND THE NORTHEASTERLY RIGHT OF WAY LINE OF NORTH CONCH AVENUE; THENCE N68°33'26"E, ALONG THE SAID NORTHWESTERLY RIGHT OF WAY LINE OF STATE ROAD NO. 5 AND ALONG THE NORTHWESTERLY LINE OF AN EXISTING LEASE, A DISTANCE OF 153.00 FEET, TO THE SOUTHEASTERLY CORNER OF LOT 45, OF SAID "CONCH KEY"; THENCE S21°26'34"E, ALONG THE SOUTHERLY EXTENSION OF SAID LOT 45 AND THE NORTHEASTERLY LINE OF AN EXISTING LEASE, A DISTANCE OF 84.20 FEET; THENCE S68°33'26"W, ALONG THE SOUTHEASTERLY LINE OF AN EXISTING LEASE, A DISTANCE OF 66.32 FEET; THENCE S67°16'34"W, ALONG THE SOUTHEASTERLY EXTENSION OF THE NORTHEASTERLY RIGHT OF WAY LINE OF NORTH CONCH AVENUE, A DISTANCE OF 15.50 FEET; THENCE N68°33'26"E, ALONG A LINE 105 FEET AND PARALLEL WITH THE BASELINE SURVEY OF SAID STATE ROAD NO. 5, A DISTANCE OF 122.85 FEET; THENCE N37°30'25"W, TO THE INTERSECTION WITH THE MEAN HIGH WATER LINE OF CONCH KEY HARBOR, A DISTANCE OF 42.00 FEET MORE OR LESS; THENCE NORTHWESTERLY ALONG THE SAID MEAN HIGH WATER LINE, A DISTANCE OF 78.3 FEET MORE OR LESS TO THE POINT OF BEGINNING;

CONTAINING 4,682 SQUARE FEET OR 0.11 ACRES MORE OR LESS.

SURVEYOR NOTES:

- 1.) BEARINGS SHOWN HEREON ARE RELATIVE TO THE NORTHWESTERLY RIGHT OF WAY LINE OF STATE ROAD NO. 5 (U.S. 1) WHICH BEARS N68°33'26"E, AS REFERENCED ON THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION RIGHT-OF WAY MAP OF STATE ROAD NO. 5 (U.S. 1).
- 2.) THIS SKETCH AND LEGAL DESCRIPTION DOES NOT CONSTITUTE A FIELD SURVEY AS SUCH.

LEGEND

FND = FOUND	MP = METAL PIPE
NGW = NAIL & WASHER	SSW = SCREW & WASHER
POB = POINT OF BEGINNING	P.B. = PLAT BOOK
POC = POINT OF COMMENCE	PG. = PAGE
[D] = DESCRIPTION DIMENSION	MUP = WOOD UTILITY POLE
[C] = CALCULATED DIMENSION	ASPH = ASPHALT
[P] = PLAT DIMENSION	MHWL = MEAN HIGH WATER LINE

NOT VALID WITHOUT THE SIGNATURE AND
THE ORIGINAL SEAL OF A FLORIDA
LICENSED SURVEYOR AND MAPPER.

B. T. Bellino 7-23-04

BRIAN T. BELLINO DATE
LICENSED SURVEYOR AND MAPPER
FLORIDA CERTIFICATION NO. 4973

P.O. BOX 168, ISLAMORADA, FLORIDA, 33036 PH: (305) 393-0413

Florida Department of Transportation, District VI
Financial Project No. N/A

Item/Segment No. N/A

W. P. I. No.: N/A

State Project No.: N/A

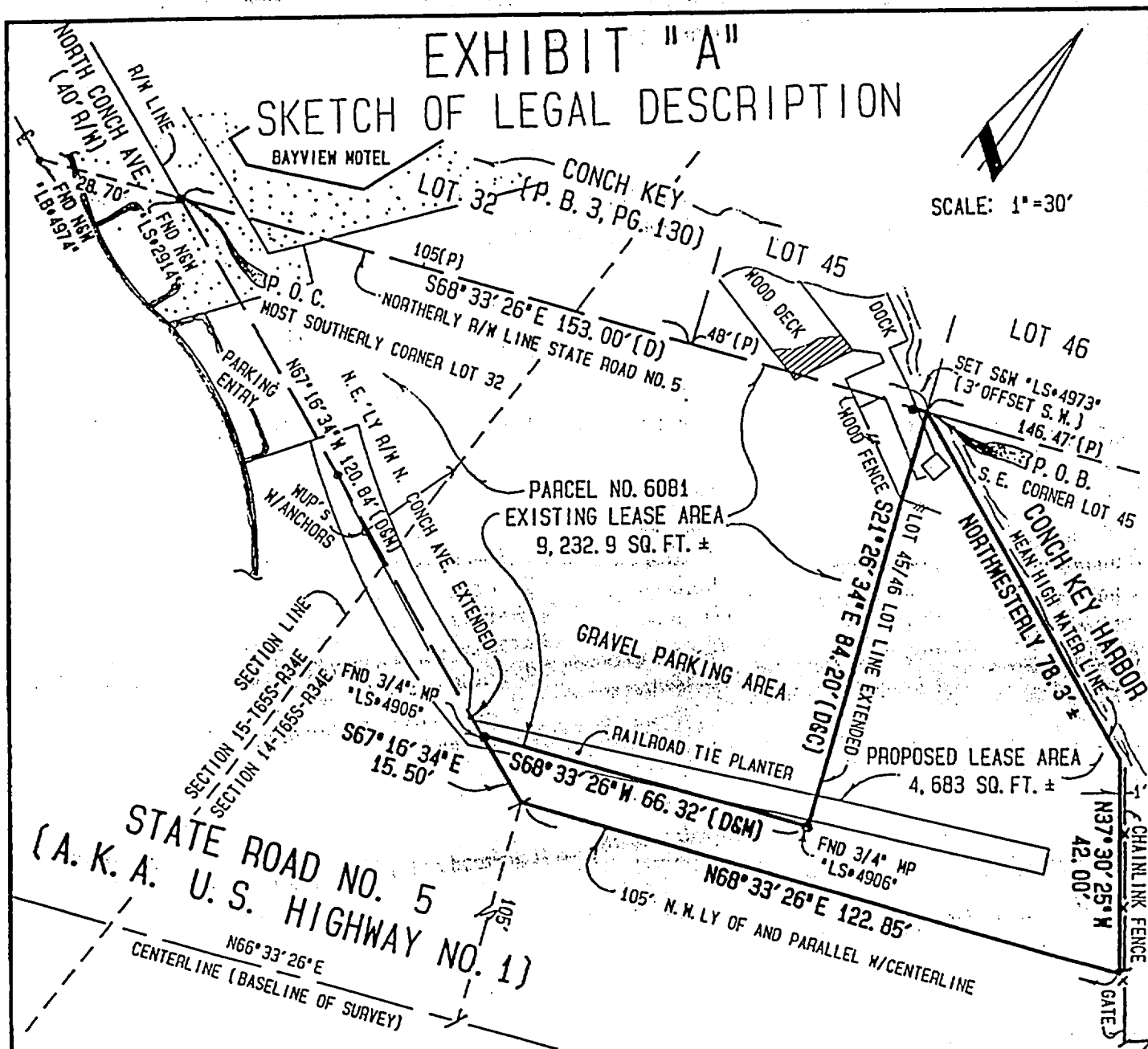
Federal Project No.: N/A

State Road No.: 5, U.S. 1, MM 68, BAYSIDE

County: Monroe

Parcel No.: 6004

Sheet 1 of 3



NOT VALID WITHOUT THE SIGNATURE AND
THE ORIGINAL SEAL OF A FLORIDA
LICENSED SURVEYOR AND MAPPER.

B. T. Bellino 7/23/04

BRIAN T. BELLINO DATE
LICENSED SURVEYOR AND MAPPER
FLORIDA CERTIFICATION NO. 4973

P. O. BOX 168, ISLAMORADA, FLORIDA, 33036 PH: (305) 393-0413

Florida Department of Transportation, District VI	
Financial Project No.	N/A
Item/Segment No.	N/A
W. P. I. No.:	N/A
State Project No.:	N/A
Federal Project No.:	N/A
State Road No.:	5, U.S. 1, MM 63, BAYSIDE
County:	Monroe
Parcel No.:	6004

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